

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: June 21, 2002

March 8, 2002

Section 141 -- Private Activity Bond; Qualified Bond  
141.00-00 Private Activity Bond; Qualified Bond

CC: TE / GE:EO2 PLR-123197-01

Legend:

Authority =

A =

B =

C =

Dear \*\*\* :

This is in response to your amended ruling request submitted on behalf of the Authority, requested a ruling that the Authority is an "instrumentality" of its governmental members.

Facts:

The Authority is a joint venture between A, B, and C. A, B, and C (the "Tribes" or "Tribal") are listed in [Rev. Proc. 2001-15, 2001-5 I.R.B. 465](#), as Indian tribal governments that are entities that exercise governmental functions for purposes of The Indian Tribal Government Tax Status Act of 1982, (Title II of Pub. L. No. 97-473, 1983-1 C.B. 510, 511, as amended by [Pub. L. No. 98-21, 1983-2 C.B. 309, 315](#)). Indian tribes listed in [Rev. Proc. 2001-15](#), are to be treated similarly to states for specified purposes under the Internal Revenue Code. The Authority has requested a ruling that it is a instrumentality of an Indian tribal government as that term is defined in [§ 7871 of the Internal Revenue Code](#).

Each Tribal member passed a resolution agreeing to share the cost of creating and operating the Authority. The Authority provides administrative, management and accounting services to Tribal operated programs and services. These programs and services were formerly operated by the Bureau of Indian affairs on behalf of the Tribes. The programs deal with social services, realty, adult vocational training, direct employment, agriculture, credit and finance, forestry, and water resources. All of the program activities, including all program employees, are directly supervised by the relevant Tribe.

Under the agreement to share costs, all acquired property and self-generated income is owned by the Tribes. The Authority has no funds for distribution or retention, nor any funds that may inure to any private benefit. All property is owned by its member Tribes and is merely assigned by the Tribes to the Authority for its use. The Authority's only source of income is cost reimbursement from the Tribes. The Authority is prohibited from generating income. Further, the Authority is not capable of acquiring property in its own name. The Authority is wholly dependent on the Tribes for its annual operating budget, its reimbursement of expenses, and its use of Tribal property.

The Authority's employees consist of an executive director, a financial officer and the accounting assistant. The executive director is hired by the Tribal councils, and is "accountable to each individual tribal council." If any Tribal council fails to concur, the executive director cannot be hired. If any Tribal council wishes to fire the Executive director, it may do so. The shared cost agreement contains a dispute resolution mechanism in the event that a disagreement about firing the executive director occurs. The executive director supervises the financial officer and the accounting assistant.

#### Law and Analysis:

Section 103(a) provides that gross income does not include interest on any State or local bond. [Section 1.103-1\(b\) of the Income Tax Regulations](#), provides that an obligation issued by or on behalf of any governmental unit by a constituted authority empowered to issue such an obligation is the obligation of such a unit.

Section 141(a)(1) provides that a "private activity bond" is any bond issued as part of an issue that satisfies the private business use test and the private security or payment test, or the private loan financing test. Section 141(b)(1) provides that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6)(A) provides that for purposes of § 141(b), the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. Under § 1.141-1(b) a governmental person includes instrumentalities of states or political subdivisions.

Section 7701(a)(40)(A) provides that the term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

[Section 7871](#) provides that Indian tribal governments will be treated as a State for certain purposes. Under [§ 7871\(c\)\(3\)\(E\)\(ii\)](#) the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Under [Revenue Ruling 57-128, 1957-1 C.B. 311](#), the following factors are taken into account to determine whether an entity is an instrumentality of one or more governmental units: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

The members of the Authority are all recognized as Indian tribal governments that are to be treated similarly to states for specified purposes under the Internal Revenue Code. The Authority provides administrative, management and accounting services to manage programs, that were once performed by the Bureau of Indian Affairs, for the benefit of and on behalf of the Tribes. The Authority is wholly dependent on the Tribes for the funding of its operating budget, the reimbursement of its expenses, and the use of Tribal property. No Authority funds may inure to any private benefit. Employees of the Authority provide services to and at the direction of the Tribes. Tribal members control the Authority through the selection of (and the power to remove) the executive director of the Authority and through the budget process. The Authority, in effect, performs the functions that each member Tribe or another entity would otherwise have had to perform. Finally, the Authority was authorized by Tribal resolutions.

#### Conclusion:

Accordingly, based on the above factors, we conclude that the Authority satisfies [Rev. Rul. 57-128](#), and is a wholly owned instrumentality of its Tribal members for purposes of § 141. The trade or business of an instrumentality is that of the governmental unit for which it acts.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No implication should be drawn from the above discussion or conclusions that [Rev. Rul. 57-128](#), applies for purposes of § 115.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the Authority.

Sincerely,

Elizabeth Purcell  
Chief Exempt Organizations Branch 2  
Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)

Enclosures:

Copy of this letter

Copy for § 6110 purposes

CC:

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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